

**MINUTES  
of the  
FOURTH MEETING  
of the  
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**September 25-26, 2014  
New Mexico Highlands University  
Las Vegas, New Mexico**

The fourth meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Gail Chasey, co-chair, on September 25, 2014 at 9:27 a.m. at the Student Union Building Ballroom at New Mexico Highlands University (NMHU) in Las Vegas.

**Present**

Rep. Gail Chasey, Co-Chair  
Sen. Richard C. Martinez, Co-Chair  
Rep. Eliseo Lee Alcon  
Rep. Emily Kane (9/25)  
Sen. Linda M. Lopez  
Rep. Georgene Louis  
Sen. Cisco McSorley  
Rep. Jane E. Powdrell-Culbert  
Rep. William "Bill" R. Rehm  
Sen. Sander Rue (9/25)

**Advisory Members**

Sen. Jacob R. Candelaria (9/25)  
Rep. Kelly K. Fajardo (9/25)  
Sen. Bill B. O'Neill (9/25)  
Rep. Patricia Roybal Caballero  
Rep. Sheryl Williams Stapleton

**Absent**

Sen. Joseph Cervantes  
Rep. Zachary J. Cook  
Rep. Yvette Herrell  
Rep. Mimi Stewart  
Sen. Lisa A. Torracco

Rep. Phillip M. Archuleta  
Sen. Craig W. Brandt  
Rep. Cathrynn N. Brown  
Rep. Brian F. Egolf, Jr.  
Rep. Miguel P. Garcia  
Sen. Daniel A. Ivey-Soto  
Rep. Antonio "Moe" Maestas  
Rep. Paul A. Pacheco  
Sen. William H. Payne  
Sen. John Pinto  
Sen. Michael S. Sanchez

**Guest Legislator**

Rep. Dennis J. Roch (9/25)

(Attendance dates are noted for members not present for the entire meeting.)

**Staff**

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)

Caela Baker, Staff Attorney, LCS

Monica Ewing, Staff Attorney, LCS

Julio Garcia, Legislative Intern, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are in the meeting file.

**Thursday, September 25****Welcoming Remarks**

Max Baca, director of information technology and government relations liaison, NMHU, welcomed the committee and noted recent changes to the university's academic programs and campus facilities.

**Juvenile Justice Advisory Committee (JJAC)**

Sharon Stover, chair, JJAC, informed the committee that the JJAC makes recommendations regarding juvenile delinquency prevention and juvenile detention alternatives to the secretary of children, youth and families. Twenty regional juvenile justice continuum boards made up of legislators, educators, social service professionals, youth and others work toward the JJAC's statewide goals. Five additional boards will be established in the future.

The 70 statewide JJAC programs receive federal and state funding; however, federal funding has been reduced significantly in recent years. In 2007, the JJAC received an appropriation from the legislature.

Judge Angie Schneider-Cook, vice chair, JJAC, and chair, Otero County Continuum Board, said that the board's 22 members include stakeholders from the community. The board is focused on identifying services that are needed or being duplicated and implementing preventative diversionary services to reduce the number of youths in the juvenile justice system. The board's primary challenge is a lack of funding.

Amber Parker, coordinator, Las Cruces Continuum Board, said that the diversion program in Las Cruces is the only one to be designated as a "best practices" program. Over the past five years, case processing time in the Las Cruces area has been reduced from 90 days to eight days, and diversion program completion rates are at 97%. Youths and juvenile probation officers work together to find solutions when youths fail to complete programs.

Ms. Parker said that there is significant need for adolescent substance abuse treatment programs, counseling and transportation. There is inequity in the availability of youth programs throughout the state, and geographically isolated communities do not have access to programs that exist in more urban areas.

Jack Ortega, coordinator, Rio Arriba County Continuum Board, said that there are several youth programs in operation in the county, including youth-at-risk programs and programs to assist youths between the times of arrest and adjudication. Poverty, domestic violence, substance abuse and inconsistency in education are some of the greatest challenges for youths and families that are served by the programs.

The Rio Arriba County Continuum Board collaborates with the county's DWI council and a county-funded health council with respect to community programs. The county aims to spend money that it saves from reduced detention to increase community services.

Tina Maes, a 17-year old student who participated in the intensive community monitoring program (ICM), discussed the circumstances — including an unstable family life and family members' substance abuse — that led to her involvement with the juvenile justice system. Ms. Maes reported that her experience in the ICM was positive; she learned that she can achieve her goals through hard work and has enrolled in a high school equivalency diploma program. Ms. Maes expressed her appreciation of her ICM mentor.

Tamera Marcantel, special programs manager, Children, Youth and Families Department (CYFD), informed the committee that state funding for programs is needed because of a 65% reduction in federal funding since 2011. The program managers understand the importance of conducting internal evaluation to ensure that resources are used effectively and efficiently to improve the state's juvenile justice system.

## **Questions**

In response to a question about the ICM, Mr. Ortega said that the program, which has been in operation in Santa Fe and Rio Arriba counties since 2004, provides an adult mentor who communicates with and provides daily support to the program's participants.

A committee member noted that, with respect to the difference between rural and frontier areas of the state, population is a useful measure, but access to services should also be taken into consideration.

In response to a question about program funding, a presenter said that county and local governments are required to provide a 40% in-kind or cash funding match. Another member noted the importance of program evaluation and evidence-based programming, which he said is helpful to policymakers.

## **Joint Education Task Force (JETF) Report and Recommendations**

Petra Jimenez Maes, senior justice, New Mexico Supreme Court, and co-chair, JETF, said that her interactions with two youths inspired her to start the JETF. One youth was in the foster system and encountered difficulty and delay in registering for school each time she was placed in a different foster home. The other was a senior in high school who, because of her time in the foster system and resulting lapses in education, had significant gaps in her knowledge of United States history. Justice Maes learned that students in the foster system are often denied school credits or are discouraged from enrolling in school in the middle of a school year.

Justice Maes said that the JETF was established by a joint order, is co-chaired by Governor Martinez and provides collaborative advice and recommendations about the needs of children and youths, with an emphasis on youths in the state's custody. The task force met to explore barriers to students' educational success and to identify possible solutions. The JETF identifies three areas of focus: 1) communication and data-sharing; 2) school changes and transfers; and 3) disciplinary policies. Work groups were formed to identify possible solutions to the issues presented in each focus area. The JETF and the New Mexico Supreme Court approved a list of recommendations in April 2014, and the full task force report is available electronically.

To facilitate early enrollment in schools, the JETF developed a letter from the CYFD to school principals. The letter identifies students in a principal's school who are in the state's custody and provides information about the students' guardians and social workers. The letter is intended to improve communication regarding students in the state's custody.

## **Questions**

A committee member asked whether students who move between foster homes could continue attending a school where the student has established relationships. A presenter noted that there are no legal barriers to continued attendance but said that funding allocation and transportation for the student could present difficulties.

## **Lowering Caseloads for Parents' Attorneys**

Brett Ballew, managing attorney, Washington State Office of Public Defense, Parents Representation Program, said that his office contracts with attorneys to provide representation for parents. The program began as a pilot after a legislative report revealed that parents were receiving inadequate representation due to their attorneys' large caseloads. The program is now operating in 85% of the state's jurisdictions.

The Parents Representation Program aims to increase resources, including social workers and expert witnesses, and provides for attorneys to allocate 33% of their time to parent communication and 20% to court appearances. The Washington Supreme Court assisted with developing program standards, and attorneys are required to certify that they are not exceeding those standards.

Regarding client communication, Mr. Ballew said that attorneys need to be available to their clients, many of whom may have mental health or addiction concerns. The program encourages attorneys to advocate for clients to receive services that will improve their parenting skills. The program encourages visits between parents and their children, with consideration given to a child's developmental stage. Given the high costs associated with foster care, the program pays for itself within three years through foster care system savings.

## **Questions**

A committee member recalled a recent New Mexico court decision that related to contract public defenders' caseloads and resulting ineffective assistance of counsel. The member asked what it could cost New Mexico to implement a program like Washington's, in which attorneys are limited to 80 cases. Justice Maes said that the Second Judicial District implemented a caseload reduction causing a \$300,000 budget deficit. As a result, the court will request additional funding from the legislature.

A member said that data show that greater investment in the foster system can lead to a reduction in the length of time a child is in the system's custody — which can amount to a savings of \$100,000 per child per year. Mr. Ballew responded that his program pays its lawyers \$102,000 to \$120,000 per year, which is about \$77.00 per hour after the lawyers pay their costs. He added that insurance companies have asked that lawyers be required to carry reduced caseloads to reduce the chance of costly litigation associated with excessive caseloads.

A member suggested that a funding formula could help to reduce disparities among counties with respect to how court funding is allocated. Justice Maes said that the state's judiciary will continue working with Mr. Ballew to identify solutions for New Mexico.

## **Juvenile Detention Alternatives Initiatives (JDAI)**

Craig Sparks, director, Bernalillo County Youth Services Center, reported that Bernalillo County became involved with the state's JDAI in the late 1990s after nationwide juvenile justice policies caused dramatic increases in detention center populations. The Annie E. Casey Foundation provided funding and technical assistance with developing detention alternatives, and by 2005, Bernalillo County had made significant improvements in detention levels.

The focus of JDAI is to detain only those persons who are a threat to the community and to provide intensive youth accountability programs for those who are not a threat.

Susan Alkema, special master, Second Judicial District, said that while Bernalillo County's program has reduced the detention population, there is still room for improvement. She noted that the most important strategy for improvement is data-driven collaboration. Bernalillo County's program serves many youths that do not live in the county. Juvenile probation officers report to state courts, but counties are responsible for detention centers. This creates a need for effective communication and collaboration.

Ms. Alkema said that a risk-assessment instrument is a detention-screening tool that is used to determine whether juveniles should be detained. She added that when youths are diverted from detention, court resources are preserved.

Louis P. McDonald, chief judge, Thirteenth Judicial District, reiterated the importance of the risk-assessment instrument and added that the courts have been able to reduce the length of time between an incident and disposition of a case in court. Punishment is more effective when it is imposed as close in time to the commission of the offense as possible.

Nick Costales, deputy director of field services, CYFD Juvenile Justice Services, said that the state is trying to speed up the determination of whether detention is appropriate. If detention is not appropriate, police correspond with a youth's family, and the youth is required to report to a probation office within three days. This process is intended to connect youths with necessary services and has a good success rate; Mr. Costales could recall only one youth who failed to show up to a probation office as required. Under the previous system, only one-half of youths would show up to their probation offices.

Judge McDonald said that it is important to consider that many youths "age out" of criminal activity and that if all youths are incarcerated, the system may do more harm than good for those who are engaging in behaviors that will likely cease within a few years.

### **Questions**

A member asked how JDAI collaborates with the state's continuum boards. Mr. Sparks responded that often the JDAI steering committee includes the same representatives that serve on a continuum board. The continuum boards focus more on early intervention, while JDAI is focused on detention issues. Judge McDonald added that juvenile justice affects education, and it is important to consider the two systems together.

In response to a question about whether JDAI receives state funding, Mr. Sparks said that some funding is available through the CYFD and through the state's continuum funds.

### **Ending the School-to-Prison Pipeline**

Senator O'Neill discussed Senate Memorial 69 (2014) that called for a task force to examine the school-to-prison pipeline. The memorial tasked the Public Education Department (PED) with developing a comprehensive strategy and budget to study school discipline policies, including zero-tolerance policies, which result in some youths becoming unnecessarily involved in the juvenile justice system.

Senator O'Neill recalled his experience as the executive director of the Juvenile Parole Board. Certain youths in the system had only school disciplinary actions and no criminal activity on their records. He added that an analysis of which schools have zero-tolerance policies could be important to gaining insights into the improper involvement of certain youths with the juvenile justice system.

## **Questions**

A member recalled that the legislature passed a law that would require the PED to keep data on school discipline and expulsions, but the law was vetoed. Having that information would help to identify the scope of the problem.

Another committee member noted that the memorial notes a disproportionate impact on Native Americans. Judge McDonald responded that the New Mexico Center on Law and Poverty reported that zero-tolerance policies affect Native Americans, Hispanics and the poor disproportionately. Another member noted that the United States Office of Civil Rights reported that New Mexico has one of the highest rates of expulsion of Native American students in the nation.

## **Motion**

The CCJ voted to send a letter to the Legislative Finance Committee to state the CCJ's support for the Corrections Department's request for funding for its information technology systems.

## **University of New Mexico (UNM) Center of Excellence in Child Maltreatment and Abuse**

Dr. Leslie Strickler, associate professor of pediatrics, and medical director, Child Abuse Response Team, UNM Health Sciences Center, said that she is one of only two pediatricians in the state who is trained to evaluate children who are alleged to have suffered abuse or neglect. Medical evaluations are important because unfounded allegations of abuse can devastate families, while failing to recognize abuse puts children at significant risk for increased abuse and maltreatment. The evaluations can be lengthy and can involve time-consuming court proceedings.

UNM houses the only two board-certified child abuse pediatricians in the state. The UNM Child Abuse Response Team evaluates alleged victims of abuse or neglect, and three-fourths of the alleged victims are from the Albuquerque metropolitan area. Dr. Strickler reported that UNM is providing a good service given its limited resources, but across the state, more services are needed. Only one-third of the physical and sexual abuse investigations conducted by the CYFD involved alleged victims from the Albuquerque area.

In addition to evaluation and legal services, Dr. Strickler and her colleague provide education to UNM medical students and to non-medical professionals. She would like to expand the clinical and education services offered by the Child Abuse Response Team through telehealth models. The program will seek \$779,000 in funding for fiscal year 2016 to fund new staff positions and to increase the number of funded physician salaries to sustain local service and to implement statewide service.

## **Questions**

A member asked how physical and emotional indicators of abuse are recognized during an evaluation. Dr. Strickler said that trained physicians interview children and screen for

indicators of abuse. General practice providers are not as comfortable with those evaluations. She added that her goal would be to provide real-time services and consultations to other physicians via telemedicine models. Telehealth can be used for education and treatment.

In response to a question about referrals from schools, Dr. Strickler said that many referrals are generated by schools, which is critical because of schools' close contact with students. Another member said that state law requires educators to receive child abuse recognition training and that the training is delivered by the CYFD, law enforcement and the district attorney's office in the member's district.

Another committee member asked about investigation procedures. Dr. Strickler said that only about one-half of the children that are evaluated in her office are diagnosed as having been abused. She emphasized the importance of recognizing the other factors that might play into an allegation of abuse.

Regarding her funding request, Dr. Strickler said that the funding for staffing is for staff at UNM.

In response to a question about her expert testimony work, Dr. Strickler said that cases that are medically straightforward can become very complicated in the courtroom, and she sometimes encounters skepticism about her objectivity. Investigations are private, and what emerges in media coverage of a case is not a complete reflection of the details of that case.

Another committee member said that policymakers need help from experts in the medical community to understand how to create policies that protect children. Dr. Strickler agreed that education and professional collaboration is important.

In response to a committee member's comment that abused children are without a voice, Dr. Strickler agreed that children are at a disadvantage, and research is starting to show how abuse and events in childhood are manifested later in life and affect adults' health.

### **Serious Youthful Offender Amenability Hearings**

Representative Roch informed the committee that many states hold hearings regarding a youthful defendant's amenability to treatment before the case against the defendant is adjudicated. By contrast, New Mexico holds amenability hearings after adjudication and before sentencing.

Representative Roch highlighted a case from Tucumcari in which a district attorney and a public defender agreed that holding the amenability hearing before the adjudication would be beneficial, and they petitioned the court to allow it. The New Mexico Supreme Court ultimately decided to allow the hearing to take place before adjudication, and the defendant accepted a plea deal and proceeded to treatment pursuant to the Delinquency Act. Representative Roch proposed

that the legislature could avoid procedural disputes like the one in the case he described if the legislature revised the relevant statute to provide for pretrial amenability hearings.

Timothy Lee Rose, district attorney, Tenth Judicial District, provided additional details about the Tucumcari case to support Representative Roch's proposal. The defendant was a 14-year-old boy who had a rough childhood and was accused of killing his family members. Mr. Rose emphasized that a long trial might be unnecessary in certain cases, and he said that the proposed legislation could prevent lawyers and parties from having to participate in a trial if a defendant is amenable to treatment.

### **Questions**

A member emphasized the difference between serious youthful offenders and youthful offenders, for whom pretrial evaluations are already available. The member suggested that rather than revising the law, the decision to hold a pretrial amenability hearing could be left to the parties and the judge to decide. The member added that the circumstances and the outcome in the case in Tucumcari are the exception and not the rule.

A member asked for the legal rationale for the current statutory language requiring the hearing to be held after trial. Justice Maes said that previously, the hearings were held before trial, but that process raised concerns with delays in hearings. She expressed concern with making pretrial hearings mandatory because of issues that were encountered when that system was previously in place.

### **Hazing**

Representative Kane informed the committee that New Mexico is one of six states that does not have statutory penalties for hazing. Hazing is addressed in rule as a form of bullying, but it is not included in statute. She proposed legislation that would define hazing more clearly, and she emphasized that the state has an interest in providing a safe environment in schools. The language in her proposed bill was modeled on an Illinois statute.

### **Questions**

A member asked whether the proposed law provides for a person to recover from hazing after the person gave consent to the activity. Representative Kane agreed that if bodily harm resulted from an activity that was required in order for the person to become a member of a group, then the person who caused the harm could be charged with a misdemeanor.

Another member noted that it is important to consider the intent of a person who could be charged under the statute.

### **Update from the CYFD**

Mr. Costales informed the committee of some of the CYFD's recent initiatives. He said that the department is taking a new approach to probation and is focusing on establishing relationships with the families of youths who are being monitored. As part of the new approach,

the CYFD is initiating wraparound training on the services available to families in their communities.

Robert Mitchell, deputy director for facilities, CYFD, said that his work focuses on seamless transitions between field services and the CYFD's facilities. The department is looking into separating its data related to injuries in facilities so that client-client related injuries and client-staff related injuries are distinguishable. Regarding recidivism, Mr. Mitchell said that the department is looking to use a national standardized definition of recidivism. Using the current definition, the department is at 7.1%, which includes clients who are recommitted within two years of release.

### **Questions**

A member recalled that the Children's Code was revised in 2009, and he requested a comparison of pre-2009 and post-2009 recidivism rates. The presenters noted that it is necessary to use an objective measure, such as a subsequent finding of guilt, to accurately track recidivism. Another member reiterated the legislature's need for recidivism data in order to make policy decisions. Mr. Mitchell agreed that data are important.

In response to a question about budget requests, Mr. Costales said that the CYFD seeks a net budget increase of \$1.8 million.

### **Minutes**

The minutes for the committee's July and August meetings were approved without objection.

### **Adjournment**

There being no further business before the committee, the fourth meeting of the CCJ for the 2014 interim adjourned at 4:08 p.m.